

AG Contract No.: KR03-1109TRN
ADOT ECS File: JPA 03-019
Project No. HRF-YYU-0-082 01C;
HRF-YYU-0-082 02C;
HRF-YYU-0-082 03C
TRACS No. HF082 01C(FY03)
HF082 02C (FY05)
HF082 03C (FY06)
Section: Avenue E, Port of Entry to
Juan Sanchez
HURF Exchange Program

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE COUNTY OF YUMA

THIS AGREEMENT is entered into 9 December, 2003, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the COUNTY acting by and through its BOARD OF SUPERVISORS (the "County").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-6993(g) to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The County is empowered by Arizona Revised Statutes Section 11-251 and 11-952 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the County.

3. The State has approved the exchange of \$315,000.00 Highway User Revenue Funds (HURF) to the County for the new construction to Avenue E, Port of Entry to Juan Sanchez, and such funds will be repaid to the State by withholding from the YUMA METROPOLITAN PLANNING ORGANIZATION (YMPO) federal funds and the obligation authority for federal funds in the amount of \$956,431.06 in Fiscal Year 2005.

4. The State has approved the exchange of \$900,000.00 Highway User Revenue Funds (HURF) to the County for the new construction to Avenue E, Port of Entry to Juan Sanchez, and such funds will be repaid to the State by withholding from the YUMA METROPOLITAN PLANNING ORGANIZATION (YMPO) federal funds and the obligation authority for federal funds in the amount of \$956,431.06 in Fiscal Year 2005.

NO. 26475
Filed with the Secretary of State
Date Filed: 12/09/03

Janice K. Brewer
Secretary of State

By: Vincent J. Haernewald

5. The State has approved the exchange of \$720,000.00 Highway User Revenue Funds (HURF) to the County for the new construction to Avenue E, Port of Entry to Juan Sanchez, and such funds will be repaid to the State by withholding from the YUMA METROPOLITAN PLANNING ORGANIZATION (YMPO) federal funds and the obligation authority for federal funds in the amount of \$850,161.00 in Fiscal Year 2006

6. The parties hereto agree and acknowledge to the following conditions: 1) The amounts referenced in this agreement are subject to change; 2) The estimated amounts can change substantially; and, 3) Both parties will perform their responsibilities consistent with the agreement.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The County will:

a. Provide design of the improvement and acquire the necessary rights-of-way contemplated for the Project. Provide the State documentation of design and acquisition of rights-of-way with invoices.

b. Provide design plans, specifications and such other documents and services required for construction bidding and construction.

c. Call for bids and award one or more construction contracts for the project. Administer same, and make all payments to the contractor(s). Be responsible for any additional funds required to complete the project, and for any contractor claims for extra compensation due to delays or whatever reason. Comply with all applicable State laws, rules and regulations.

d. Invoice the State for thirty percent of the Project construction cost, at the start of construction.

e. Invoice the State for thirty percent of the Project cost at the thirty percent and sixty percent Project construction completion stages.

f. Upon completion, approve and accept the project as complete and provide maintenance. Provide ADOT with a letter documenting the notice of the approval and acceptance of the project.

g. Invoice the State for the remaining ten percent of the project cost at the one hundred percent project completion stage after the County, YMPO, and the State (ADOT) representatives have completed final project review.

2. The State will:

a. Within 30 days after receipt and approval of a design invoice, pay for the Project design cost, at the thirty percent project completion state, and for thirty percent of the Project cost at the sixty percent Project design completion state, and for thirty percent of the Project cost at the ninety percent Project design completion state, and pay 10 percent upon receipt of bid ready documents.

b. Withhold from YMPO, federal funds and the obligation authority of federal funds \$315,000.00 in Fiscal Year 2003 for construction.

c. Withhold from YMPO, federal funds and the obligation authority of federal funds \$810,000.00 in Fiscal Year 2005 for construction.

d. Withhold from YMPO, federal funds and the obligation authority of federal funds \$720,000.00 in Fiscal Year 2006 for construction.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no liability under this agreement. The County assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, cost over-runs and claims. It is agreed that the State's participation is confined solely to advancing highway user revenue funds; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the County and that the County hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the County, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation or attorneys' fees.

2. This agreement shall remain in force and effect until completion of said project; provided, however, that this agreement, except any provisions herein for maintenance, which shall be perpetual, unless assumed by another governmental entity, may be canceled at any time prior to the award of a construction contract, upon thirty (30) days written notice to the other party.

3. This agreement shall become effective upon filing with the Secretary of State.

4. This agreement may be canceled in accordance with Arizona Revised Statutes Section 38-511.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

6. In the event of any controversy, which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

7. **Non-Discrimination** The contractor shall comply with Executive Order 99-4, which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation shall have equal access to employment opportunities, and all other applicable state and federal employment laws, rules and regulations, including the Americans With Disabilities Act. The contractor shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, age, national origin or political affiliation or disability.

8. **Non-Availability of Funds** Every payment obligation of the State and the County under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State and the County at the end of the period for which the funds are available. No liability shall accrue to the State and the County in the event this provision is exercised, and the State and the County shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, Mail Drop 616E
Phoenix, AZ 85007
FAX: 602-712-7424

Yuma County
County Engineer
2703 South Avenue B
Yuma, AZ 85364

10. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

YUMA COUNTY


STATE OF ARIZONA

Department of Transportation

By 
LENORE LOROÑA STUART
Chairman of the Board

By 
DALE BUSKIRK, Division Director
Transportation Planning Director

ATTEST

By 
SUE STALLWORTH
Interim Clerk of the Board

OFFICE OF THE
BOARD OF SUPERVISORS
198 Main Street
Yuma, Arizona 85364

DAVID R. GARCIA
COUNTY ADMINISTRATOR



LENORE LOROÑA STUART
DISTRICT 1
LUCY SHIPP
DISTRICT 2
CASEY PROCHASKA
DISTRICT 3
MARCO A. (TONY) REYES
DISTRICT 4
ROBERT J. (BOB) MCLENDON
DISTRICT 5

STATE OF ARIZONA)

SS.

COUNTY OF YUMA)

I, Sue Stallworth, Interim Clerk of the Board of Supervisors do hereby certify that I am required by law to maintain custody of the minutes of the Board of Supervisors and that the following is a true and correct copy of the portion of the minutes of the Board of Supervisor's meeting held October 6, 2003.

"Supervisor Shipp moved and Supervisor Reyes seconded to authorize the Chairman of the Board to sign an Intergovernmental Agreement between the Arizona Department of Transportation, Intermodal Transportation Division, and the County of Yuma for the Avenue E Construction Project, County 23rd Street (Juan Sanchez Blvd.) to Port Of Entry. The motion carried."

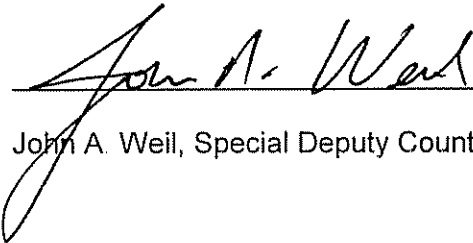
In Witness Whereof I hereunto set my hand and Official Seal of the Board of Supervisors. Done at Yuma, the County Seat this 6th day of October, 2003.

A handwritten signature in cursive script, reading "Sue Stallworth", is written over a horizontal line.
Sue Stallworth
Interim Clerk of the Board

APPROVAL OF THE YUMA COUNTY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and YUMA COUNTY and declare this agreement to be in proper form and within the powers and authority granted to the County under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 7th day of November, 2003



John A. Weil, Special Deputy County Attorney



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR03-1109TRN (JPA 03-019), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED December 3, 2003.

TERRY GODDARD
Attorney General

A handwritten signature in cursive script, reading "Susan Davis", is written over a horizontal line.

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

/ss

att.